

May 12, 2005

Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex K)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: TSR Fee Rule, Project No. P034305

Ladies and Gentlemen:

This comment letter is submitted on behalf of First National Bank of Omaha in response to the notice of proposed rulemaking ("Proposed Rule") and request for public comment by the Federal Trade Commission (the "Commission"), published in the Federal Register on April 18, 2005 -- TSR Fee Rule, Project No. P034305. The Proposed Rule would increase the annual fees for each area code of data accessed, as well as the maximum amount charged. First National Bank of Omaha appreciates the opportunity to comment on this important topic.

As one of the top 15 credit card issuers in the United States, First National Bank uses third-party telemarketers as one method for communicating with our current and prospective customers. Our customers are located throughout the United States and around the world.

**The Final Rule Should Require that All Sellers and Telemarketers Who are Required to Access the National Do Not Call Registry to Pay for Any and All Area Codes Accessed**

In the Proposed Rule, the Commission outlines its reasons for the changes in the fee structure, namely the increase in fees, for Fiscal Year ("FY") 2005. The Commission states the increase is necessary to raise the "\$21.9 million of fees to offset costs in expects to incur in this Fiscal Year."<sup>1</sup> First National Bank agrees that the Commission must cover the costs of the National Do Not Call Registry ("the Registry") and that it is logical to charge those users that are required by the Telemarketing Sales Rule<sup>2</sup> ("TSR") or the Telephone Consumer Protection Act<sup>3</sup> to access the Registry. However, we believe that it would be fairer to charge fees to all sellers and telemarketers that are required to access the Registry. We recommend eliminating the provision that allows the first five areas codes of data to be obtained at no cost. Instead, all users should be charged for each area code of data that they access. However, First National Bank would like to stipulate that the Commission should only allocate fees to all required users if it can be done without increasing expenditures, which could result in increased fees for everyone.

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<sup>1</sup> 70 Fed. Reg. at 20850

<sup>2</sup> 16 CFR Part 310 §310.8

<sup>3</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

Since its inception in 2003, the cost of accessing the Registry has more than doubled.<sup>4</sup> First National Bank notes that the Registry's overall cost per year does not in and of itself significantly impact our company's bottom line. However, it does add a real cost to each active account we maintain. We are concerned, given the sharp increases in the cost of the Registry over the first two years of activation, that this cost will continue to increase and over time become a significant cost that will ultimately be passed on to the consumer.

The Proposed Rule indicates that 89% of those required to access the Registry are accessing five or fewer area codes per FY; therefore, these users are not being charged for access.<sup>5</sup> The remaining 11% that are required to access the Registry are actually paying for that access, thereby covering the cost of the Registry for all other users. First National Bank believes that this fee structure is inequitable and does not accurately reflect the nature of business in the United States. We understand the Commission's need to ensure that small business is not adversely impacted by this regulation; however, the cost of the Registry should be borne by all users that are required to access the Registry and absorbed as a cost of doing business.

**The Final Rule Should Continue to Exempt from Paying All Sellers and Telemarketers that are Not Required to Access the National Do Not Call Registry But Choose to Do So Anyway.**

First National Bank agrees with the Commission's stance that those users that are not required to access the Registry, but do so anyway as good business practice should continue to be exempt from paying for access to the Registry.

First National Bank of Omaha appreciates the opportunity to comment on this important topic. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact Eric Durham, Director of Corporate Compliance at (402) 636-6647.

Sincerely,

Eric Durham  
Director, Corporate Compliance  
First National Bank of Omaha

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Fiscal Year	Fee Per Area Code Accessed	Percent Increase over Previous FY	Percent Increase Since 2003	Maximum Fee Amount	Percent Increase over Previous FY	Percent Increase Since 2003
2003*	\$25	---	---	\$7,375	---	---
2004**	\$40	160%	160%	\$11,000	149%	149%
2005**	\$56	140%	224%	\$15,400	140%	209%

\*68 Fed. Reg. at 45141.

\*\*70 Fed. Reg. at 20849.

<sup>5</sup> 70 Fed. Reg. at 20849.